

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10932 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

ATULKUMAR LAXMANBHAI PATEL

Versus

MANAGING DIRECTOR GUJARAT STATE COOP.AGRICULTURE & RURAL

Appearance:

1. Special Civil Application No. 10932 of 2002
MR RD RAVAL for Petitioner No. 1
MR MITUL K SHELAT for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 22/01/2004

ORAL JUDGEMENT

Being aggrieved of the judgement and order dated
29.6.2002 in Reference (LCA) No.985 of 1998 passed by the
learned Judge of the Labour Court, Ahmedabad, the

petitioner has approached this Court. The main grievance of the petitioner is that though the respondent Bank had approached the Labour Court by filing an approval application being No.40 of 1998 in Reference (IT) No.303 of 1978, which was granted by the learned Member of the Industrial Tribunal by his order dated 29th July 1998 and order of dismissal dated 1.4.1998 was approved, it is contested in the present proceedings that the present petitioner is not a workman within the definition of the term, 'workman' as defined under clause (s) of section 2 of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act"). Clause (s) of section 2 of the Act reads as under:

"2. In this Act, unless there is anything repugnant in the subject or context, --

....

....

(s) "workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person ---

- (i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or
- (ii) who is employed in the police service or as an officer or other employee of a prison; or
- (iii) who is employed mainly in a managerial or administrative capacity; or
- (iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature."

2. The learned advocate for the petitioner assailed the judgement and order mainly on the ground that when the Bank had approached the Industrial Tribunal by filing Approval Application, it is not open for the Bank now to contend that the petitioner is not a workman. Secondly, in number of other proceedings, details of which are set out in the written submissions submitted before the learned Judge of the Labour Court, the Bank has treated the supervisors, officers, agents, etc. as workmen and their matters before the Labour Court/ Tribunal are either settled or if not settled, the same are decided by a judgement and order and in none of such proceedings the Bank has ever raised an issue that, 'the concerned person (supervisor, officer, agent) is not a workman'. It is also contended by the learned advocate that in some of the cases the concerned persons were drawing higher salary and were occupying higher post than that of the petitioner. Some of the documents were produced to support this contention by exhibit 165. Some of the decisions of the Industrial Tribunal were also referred to, like decision in the matter of M.B. Upadhyay in Reference (IT) No.79 of 1977, the decision in the matter of J.J. Dave being Reference (IT) No.128 of 1971, the decision in the matter of A.S. Khalifa in Reference (IT) No.352 of 1978, the decision in the matter of A.L. Patel being Reference No.404 of 1976 and the last, but not the least the order passed in Approval Application No.40 of 1998 in Reference (IT) No.303 of 1978 in the case of the present petitioner himself. In substance the submissions of the learned advocate for the petitioner is that in view of the aforesaid, it was not open to the respondent Bank to contend that the petitioner is not a workman. He also submitted that in any case the learned Judge of the Labour Court ought to have held that it is not open for the Bank to contend that the petitioner is not a workman and should have held that the petitioner is a workman.

3. Mr.M.K. Shelat, the learned advocate appearing for the respondent Bank submitted that the judgement and order of the learned Judge is a well considered judgement and the learned Judge has taken all pains to consider not only the rival contentions of both the sides, but has taken pains to analyse each of the document produced by the petitioner and the respondent Bank being exhibits 178 to 203 (documents produced by the respondent Bank pertaining to working of the petitioner to establish his work in managerial capacity). Exhibits 223 to 237, except exhibit 226 produced by the petitioner to contend that the petitioner is a workman and was not working in a managerial capacity. Mr.Shelat, the learned advocate

further submitted that the learned Judge has taken pains to consider each of the decision cited before him and has compared the facts of the case with the facts of the present case. He submitted that the learned Judge has then come to the conclusion that the petitioner was discharging the duties in a managerial capacity, and therefore, he cannot be held to be a workman under the definition of the term, 'workman' in clause (s) of section 2 of the Act.

4. Mr. Shelat, the learned advocate submitted that the learned Judge was conscious of the fact that mere 'designation' and the 'pay' are not the conclusive proof/ criteria to decide as to whether a person is a workman or not and therefore, even after recording that the petitioner had joined services of the Bank in the year 1969 as a supervisor, who then came to be promoted to the level of Grade II officer was though drawing salary of Rs.10,893/-, he undertook the second part of exercise and considered the actual duties performed by the petitioner and after taking into consideration all the facts in detail, has come to the conclusion that the petitioner cannot be said to be a workman within the definition of the term, 'workman'.

5. On perusal of the judgement and order of the learned Judge, this Court has found that, it is a well considered judgement and this Court is not able to find any reason for which the same can be interfered with. It can be noted that the learned Judge has taken full care to decide the preliminary contention raised by the Bank. To appreciate that the learned Judge has undertaken full exercise, it is required to be noted that he had divided the issue in two parts, namely, (i) what was the post held by the petitioner and the remuneration received by him; (ii) What duties were performed by the petitioner and whether they are in the nature of supervisory/ managerial duties. The learned Judge after having recorded a fact that the petitioner had joined the services of the Bank as a 'supervisor' and was then promoted to the post of 'Grade II officer', drawing salary of Rs.10,893/-, has taken into consideration all the relevant material placed before the Court. The learned Judge after detailed discussion on the point has come to the conclusion that the documents produced by the Bank being Exhibits 178 to 203 are worth accepting in preference to those which were produced by the petitioner to contend that he was not discharging supervisory/ managerial functions. The learned Judge has also recorded that the petitioner was the head of the Branch and there were 2 supervisors, 5 clerks, and 2 peons under

his control and he was exercising managerial control over them. The learned Judge has recorded a finding that the petitioner was also discharging important function of advancing loans as is recorded in some of the cases the petitioner has sanctioned the loan while in many cases he has recommended the sanctioning of loan. Thus, the learned Judge in his threadbare analysis has come to the conclusion that the petitioner cannot be held to be a workman.

6. This Court on careful consideration of the judgement and order and the authorities which are referred to in the judgement and order is of the opinion that the learned Judge has not committed any error and the judgement and order of the learned Judge requires no interference at the hands of this Court.

7. In view of the aforesaid discussion the present petition fails. Rule is discharged. No order as to costs.

(Ravi R. Tripathi, J.)

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